

REMARKS

At the time of the Office Action dated August 9, 2004, claims 1-19 were pending in this application. Of those claims, claims 1-4, 6-15, and 18-19 have been rejected. Applicant acknowledges, with appreciation, the Examiner's indication that claims 5 and 16-17 contain allowable subject matter.

Claims 1, 5-6, and 16-17 have been amended. Care has been exercised to avoid the introduction of new matter. Specifically, claims 5 and 16-17 have been amended to recite that an optical drive element changes its shape in response to radiation of light with specific wavelengths, consistent with paragraphs [0101] to [0103] of the published application. Claims 1 and 6 have been amended to recite that a plurality of reflection condition control devices are capable of controlling total optical reflection independently of each other. Applicant submits that the present Amendment does not generate any new matter issue.

**CLAIMS 1, 6-7, AND 18-19 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING
ANTICIPATED BY GREEN ET AL., U.S. PATENT NO. 6,624,916 (HEREINAFTER GREEN)**

On page two and three of the Office Action, the Examiner asserted that Green discloses a multi-channel optical communication system corresponding to that claimed. This rejection is respectfully traversed.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure of each element of a claimed invention in a single reference. As part of this analysis,

the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference. That burden has not been discharged.

Independent claims 1 and 18 recite that a photoreceiver includes a plurality of photoreceptors arranged correspondingly to the plurality of reflection condition control devices/light beams. In the statement of the rejection the Examiner referred specifically to Figs. 2 and 9 and asserted that the photo diode 29 of Green corresponds to the claimed photoreceiver. However, upon reviewing the drawings (i.e., Figs. 2 and 9) and the written disclosure accompanying the drawings regarding the photo diode 29 (i.e., column 5, lines 52-63), Applicant has found no teaching or suggestion within Green as to the above-reproduced limitation. Therefore, there are significant differences between Green and the invention defined in independent claims 1 and 18 that would preclude a factual determination that Green identically describes the claimed invention within the meaning of 35 U.S.C. § 102.

Independent claims 1 and 6, as amended, recite that a plurality of reflection condition control devices are capable of controlling total optical reflection. In contrast, Green only teaches a modulator that controls transmission of light from the light source to the modulating layer. Green, therefore, does not disclose reflection condition control devices that are capable of controlling total optical reflection of the reflection plane of the retroreflector. Thus, Green fails to identically disclose the claimed invention, as recited in independent claims 1 and 6.

For the reasons stated above, Applicant respectfully submits that the imposed rejection of claims 1, 6-7, and 18-19 under 35 U.S.C. § 102 for anticipation based upon Green is not factually viable and, hence, solicits withdrawal thereof.

CLAIMS 2-4 AND 8-15 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON GREEN IN VIEW OF FAN ET AL., U.S. PATENT NO. 6,449,406 (HEREINAFTER FAN)

On pages four and five of the Office Action, the Examiner concluded that one having ordinary skill in the art would have been motivated to modify multi-channel optical communication system of Green in view of Fan to arrive at the claimed invention. This rejection is respectfully traversed.

Claims 2-4 and 8-15 respectively depend ultimately from independent claims 1 and 6, and Applicant incorporates herein the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. § 102 for anticipation based upon Green. Specifically, Green neither discloses nor suggests a plurality of reflection condition control devices are capable of controlling total optical reflection. The secondary references to Fan also does not disclose this concept. Accordingly, the proposed combination of references would not yield the claimed invention.

Applicant further notes that the Examiner has cited Figs. 6A-6C and column 9, lines 3-32 of Fan and relied upon Fan to teach that each of the reflection condition control devices includes a digital micro-actuator provided on the rear side of a transparent plate constituting the reflection

plane of the retroreflector and having a control plane being changed to control reflection from the rear side of the transparent plate. Applicant respectfully disagrees.

Figs. 6A-6C of Fan are directed to an optical switching cell including a plurality of retroreflectors (i.e., corner cubes) disposed on a plate. Fan discloses that such an arrangement can eliminate the walk-off problem (compare Fig. 6C with 5C). However, Fan does not teach or suggest that the digital micro-actuator is provided on the rear side of the transparent plate constituting the reflection plane of the retroreflector, as recited in the claims. Therefore, Fan fails to teach or suggest the limitation for which Fan is being relied.

For the reasons stated above, Applicant respectfully submits that the imposed rejection of claims 2-4 and 8-15 under 35 U.S.C. § 103 for obviousness based upon Green in view of Fan is not viable and, hence, solicits withdrawal thereof.

Applicant has made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicant invites the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicant hereby respectfully requests reconsideration and prompt allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

Application No.: 09/775,514

including extension of time fees, to Deposit Account 500417, and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP



Scott D. Paul
Registration No. 42,984

600 13th Street, N.W.
Washington, DC 20005-3096
(202) 756-8000 SDP/GZR:kap
Date: November 9, 2004
Facsimile: (202) 756-8087